

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

IVORY SUTTLE,

Petitioner,

v.

Case No. 07-C-609

BRIAN BRYTON,

Respondent.

DECISION AND ORDER ADOPTING RECOMMENDATION THAT PETITION FOR A
WRIT OF HABEAS CORPUS BE DISMISSED,
AND DISMISSING PETITION AS A SECOND OR SUCCESSIVE PETITION

On July 3, 2007, Magistrate Judge William E. Callahan, Jr., issued a recommendation that Ivory Suttle's petition for a writ of habeas corpus challenging his April 16, 1996, judgment of conviction be dismissed. Magistrate Judge Callahan noted that, on its face, the conviction is more than ten years old and, therefore, untimely. Moreover, the petition before the court is the fifth petition filed by Suttle thereby requiring the approval of the Seventh Circuit Court of Appeals as a second or successive petition. 28 U.S.C. § 2244(b)(3)(A). Further, Suttle has filed a document titled "The Reason 2 proceed in my writ of habeas corpus," which this court construes as an objection to the magistrate judge's recommendation. See 28 U.S.C. § 636(b)(1).

Applying a de novo standard of review, this court agrees that the instant petition is second or successive. Previously, Suttle filed *Suttle v. Kingston*, Case No. 05-C-526 (E.D. Wis. May 19, 2005)(dismissed as unauthorized); *Suttle v. Wisconsin*, Case No. 04-C-0614 (E.D. Wis. July 6, 2004)(dismissed as unauthorized); *Suttle v. Bertrand*,

Case No. 01-C-0344 (E.D. Wis. Dec. 9, 2002)(dismissed as untimely); and *Suttle v. Bertrand*, Case No. 99-C-0638 (E.D. Wis. Oct. 7, 1999)(dismissed for failure to exhaust). On September 16, 2005, the Seventh Circuit Court of Appeals held that Judge William C. Griesbach was correct to dismiss Suttle's last petition as unauthorized and that the Seventh Circuit had already declined to authorize the pursuit of these claims because Suttle had not identified any new evidence. *Suttle v. Kingston*, No. 04-4121 (7th Cir. Dec. 20, 2004). Hence, Suttle must ask the Seventh Circuit to permit this court to consider the pending petition. 28 U.S.C. § 2244(b)(3).

Now, therefore,

IT IS ORDERED that the recommendation of Magistrate William E. Callahan, Jr., dated July 3, 2007, is adopted.

IT IS FURTHER ORDERED that Ivory Suttle's petition for writ of habeas corpus is dismissed.

Dated at Milwaukee, Wisconsin, this 17th day of July, 2007.

BY THE COURT

s/ C. N. CLEVERT, JR.
C. N. CLEVERT, JR.
U. S. DISTRICT JUDGE